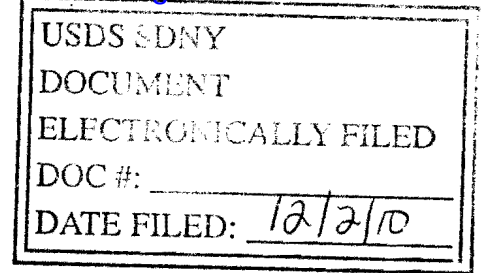


UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



EDDIE TARAFRA,

Petitioner,

10 Civ. 3870 (JGK)

- against -

MEMORANDUM OPINION
AND ORDER

DALE ARTUS,

Respondent.

JOHN G. KOELTL, District Judge:

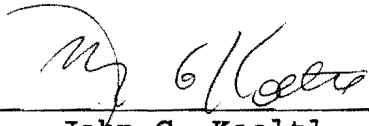
The Court has received the attached letter from the petitioner. Nothing in the letter changes the Court's prior orders in this case, the most recent of which is dated November 29, 2010. No further action is required in response to this letter.

The Court notes that the petitioner is complaining about a response by the Office of the District Attorney, Bronx County, to a Freedom of Information Law ("FOIL") request. The response notes that there are procedures under state law for appealing the partial denial of a FOIL request, and that the petitioner may wish to pursue such proceedings. Pending before this Court is a petition for habeas corpus. The standards are different for obtaining discovery in such a proceeding, and would require the petitioner to show good cause for the discovery. See Drake v. Portuondo, 321 F.3d 338, 346 (2d Cir.2003). Thus far the

Court has ruled on all applications to the Court for documents in this proceeding, and there is nothing in the petitioner's letter that causes the Court to alter any of its rulings.

SO ORDERED.

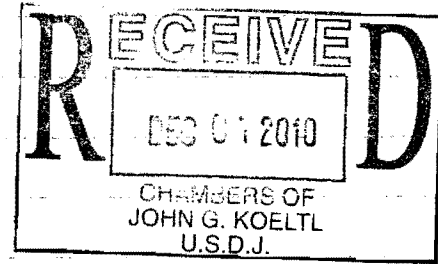
Dated: New York, New York
December 1, 2010



John G. Koeltl
United States District Judge

PO Box 2000
Dannemora, N.Y. 12929

UNITED STATES DISTRICT COURT
CHAMBERS OF
JUDGE JOHN G. KOELTL
UNITED STATES COURTHOUSE
500 PEARL STREET
NEW YORK, N.Y. 10007-1312.



RE: TARAFIA V. AETUS
10 CIV. 3870 (JGK)

YOUR Honor.

By way of this letter, I Eddie TARAFIA, petitioner
in the above matter, respectfully request that your
Honor 'review and consider' the following:

The petitioner is writing this Honorable Court
to inform your Honor that petitioner had previously
to this letter submitted various Freedom of Informa-
tion, Act Application for your Honor review and
consideration.

I would like to bring to the court attention that on Nov. 12, 2010, the petitioner received a respond from the office of the District Attorney, Bronx County in respect to the Freedom of Information Request Indictment number: 3439/2004 - 3821/2001.

The ("FOIL"), has been granted in part and denied in part.

Enclose with this letter please find a (4) pages letter

from Rafael Curbelo, FOIL supervisor Bronx District Attorney's

Office, and R.A. Curbelo Assistant District Attorney Bronx

District Attorney's office. Dated: November 10, 2010.

The petitioner argues that he should be entitle

to his ("FOIL") request for "the District Attorney's

CPL § 730.10 motion" and the "Waiver of Appeal

Document" from the District Attorney's Office Bronx

County denying petitioner ("FOIL") request it became

a Brady violation right.

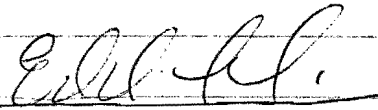
Furthermore, The petitioner have a question for this Honorable Court. How do the District Attorney's Office Bronx county, ("loss") the entire trial folder pertaining to the case of People v. Eddie TARAFA, Bronx county Indictment number 3821/2001, ? In which it could not be located after a diligent search.

Inasmuch as the District Attorney's office is very well supplied with professional Attorney's, the petitioner respectfully moves this Court to compel the District Attorney's office to provide the trial folder and pertaining ("FOIL") request "the District Attorney's CPL § 730.10 motion" and the "waiver of Appeal Document" also, request for arraignment minutes

for Docket number 2004 BX 041944 and Indictment number 3439/2004., and not to hold-up the petitioner's right to move forward with his claim.

Thank you for your time and consideration in this matter/request.

Respectfully,

A handwritten signature in cursive script, appearing to read "Eddie Tarafa".

Eddie Tarafa, pro se.

OFFICE OF THE DISTRICT ATTORNEY
BRONX COUNTY
BRONX, N.Y. 10451

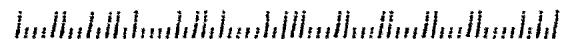
ADA Curbelo (Appeals)

C-56



Eddie Tarafa, 08-A-0632
Clinton Correctional Facility
P.O. Box 2000
Dannemora, NY 12929

1292912000





OFFICE OF THE DISTRICT ATTORNEY, Bronx County

ROBERT T.
JOHNSON
DISTRICT ATTORNEY

198 East 161st Street
Bronx New York 10451

November 10, 2010

Eddie Tarafa, 08-A-0632
Clinton Correctional Facility
P.O. Box 2000
Dannemora, NY 12929

Re: Freedom of Information Request
Indictment Numbers: 3439/2004
3821/2001

Dear Mr. Tarafa:

I am writing to inform you that your request for documents, dated October 5, 2010, pursuant to New York Public Officers Law, Article 6, sections 84 *et seq.*, the Freedom of Information Law ("FOIL"), has been granted in part and denied in part. I have found 7 disclosable documents responsive to your request.

GRANTED

Your request for "the request for an extension to file reply, filed by Robert R. Sandusky, III, of the Office of the District Attorney, Bronx County. . . . under Indictment No. 3821/2001" is granted. I have found 6 documents responsive to this request:

- a letter dated March 16, 2010, to Justice Nicholas Iacovetta in which ADA Sandusky confirms the court granted his request for an extension to file a reply to your CPL Article 440 motion (1 page);
- a letter dated May 14, 2010, to Justice Iacovetta in which ADA Sandusky confirms the court granted his second request for an extension to file a reply to your CPL Article 440 motion (1 page);
- a letter dated July 4, 2010, to District Judge Koeltl in which ADA Sandusky requests an extension to reply to your *habeas corpus* petition (2 pages);
- a letter dated August 31, 2010, to District Judge Koeltl in which ADA Sandusky requests a second extension to reply to your *habeas corpus* petition (1 page); and
- a letter dated September 30, 2010, to District Judge Koeltl in which ADA Sandusky requests a third extension to reply to your *habeas corpus* petition (1 page).

Your request for "the Attorney's Assignment Document (or same) for Docket No. 2004BX041944, under Indictment No. 3439/04" is granted. I have found 1 document responsive to this request. This document pertains to ADA Sandusky's assignment to respond to your CPL § 440.10 motion (1 page).

Each item disclosable under FOIL has a \$0.25 per-page copying fee that cannot be waived. Please send me a check or money order made payable to the ***District Attorney's Office, Bronx County***, in the amount of **\$1.75** (7 pages x \$0.25). Please make full payment within the next 60 days.

DENIED

Your request for arraignment minutes for Docket Number 2004BX041944 and Indictment Number 3439/2004 is denied. Transcripts of court proceedings are not agency records, and are not subject to FOIL disclosure. See Matter of Moore v Santucci, 151 AD2d 677, 680 (1989); *see also* CPLR § 8002 (stenographers are entitled to a fee for transcribed copies of his or her stenographic notes). If you wish to obtain transcripts of any court proceedings, you should contact the Office of the Court Reporters, Supreme Court Bronx County, 851 Grand Concourse, Room 206, Bronx, NY, 10451.

Your requests for "the District Attorney's CPL § 730.10 motion" and the "Waiver of Appeal Document" are denied. These documents were not contained in either the Appeals or Habeas Corpus folders pertaining to Indictment Number 3821/2001. Furthermore, we have been unable to locate the trial folder pertaining to that case. An agency cannot disclose what it does not possess. See Matter of Adams v. Hirsch, 182 A.D.2d 583 (1st Dept. 1992); Ahlers v. Dillon, 143 A.D.2d 225, 226 (2d Dept. 1988). Additionally, "[n]othing in [the Freedom of Information Law] shall be construed to require any entity to prepare any record not possessed or maintained by such entity." Public Officers Law § 89(3); see In re Lugo v. Galperin, 269 A.D.2d 338 (1st Dept.) (ADA's statement "that he conducted a diligent search of the DA's file and did not find the requested documents . . . suffices to satisfy respondent's FOIL obligations"), lv. denied, 95 N.Y.2d 755 (2000). An agency may also deny a FOIL request if it cannot locate a record after a diligent search. See In re Lugo v. Galperin, 269 A.D.2d 338 (1st Dept.) (ADA's statement "that he conducted a diligent search of the DA's file and did not find the requested documents . . . suffices to satisfy respondent's FOIL obligations"), lv. denied, 95 N.Y.2d 755 (2000). In which case it must certify that "such record cannot be found after [a] diligent search" (Public Officers Law § 89[3]). Public Officers Law § 89(3) does not specify the manner in which an agency must certify that documents cannot be located. See Matter of Rattley v. New York City Police Dept., 96 N.Y.2d 873, 875 (2001).

* * *

If you wish to appeal any portion of this FOIL determination, you must do so within 30 days of the date of this letter. Your appeal should be mailed to: Peter Coddington, Records Access Appeals Officer, Bronx District Attorney's Office, 198 East 161st Street, 10th Floor, Bronx, NY 10451.

Sincerely,

Rac

Rafael Curbelo
FOIL Supervisor
Bronx District Attorney's Office



OFFICE OF THE DISTRICT ATTORNEY, Bronx County

ROBERT T. JOHNSON
District Attorney

198 East 161st Street
Bronx, New York 10451

RECORDS CERTIFICATION

I, R.A. CURBELO, an Assistant District Attorney in the Office of Robert T. Johnson, the District Attorney of Bronx County, hereby certify pursuant to Public Officers Law Article 6 (the Freedom of Information Law), section 89(3):

1. On July 22, 2010, Assistant District Attorney Robert Sandusky ordered the trial folder pertaining to the case of **People v. Eddie Tarafa, Bronx County Indictment Number 3821/2001**, by submitting a request to Appeals Bureau Case Aide P. Tiangco.

2. On August 4, 2010, former Records Access Officer Edwards ordered the trial folder pertaining to the case of **People v. Eddie Tarafa, Bronx County Indictment Number 3821/2001**, by submitting a folder request form to the archivists at City Storage.

3. On August 25, 2010, former RAO Edwards followed up the search for the trial folder by leaving a voice message with archivists D. Brown and A. Perkins of City Storage.


4. On October 21, 2010, I requested the trial folder by submitting a written request to Investigations Division Case Aide N. Camacho. According to ADA Sandusky, the folder was last with ADA Kapp of the Investigations Division in April of 2010.

5. On October 25, 2010, I received a call from Case Aide Camacho informing me that the folder was no longer with the Investigations Division. That same day, I submitted a written request for the folder to archivist A. Perkins of City Storage and R. Richard of Operations.

6. On October 27, 2010, I received a call from archivist A. Perkins informing me that the trial folder had been marked "Not In Bin" according to the logbook entry of March 30, 2010.

7. I hereby certify that despite these efforts, the trial folder pertaining to the case of **People v. Eddie Tarafa**, Bronx County Indictment Number 3821/2001, could not be located after a diligent search.

Dated: November 10, 2010



R.A. Curbelo
Assistant District Attorney
Bronx District Attorney's Office